

Municipal Services Agency
Paul Hahn
Agency Administrator



County Executive
Terry Schutten

County of Sacramento

May 14, 2009

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: Revised Notice of Preparation of Environmental Impact Report and
Environmental Impact Statement for the Bay Delta Conservation Plan

Dear Ms. Brown:

This letter responds to and provides comments on the Revised Notice of Preparation of Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan ("BDCP"), issued on February 13, 2009.

On August 27, 2008, Sacramento County wrote a letter to Secretary Mike Chrisman, California Resources Agency, and Karen Scarborough, Chair of the BDCP Steering Committee, expressing its concerns and relaying its positions on the BDCP. Specifically, the County expressed its concern that the BDCP will very likely have significant impacts on the County, including environmental impacts in addition to many others. In its previous letter, the County also noted its concern that those impacts were not adequately being addressed or protected. Below, the County addresses both its environmental concerns with the BDCP and its more overarching concerns about the BDCP process.

Environmental Issues with BDCP

The environmental impacts of the BDCP will require thorough evaluation and consideration. While all parties recognize the need for action to protect the Delta ecosystem, the County, as one of the five counties with jurisdiction over the Delta, is particularly cognizant of the sensitivity of the Delta ecosystem. However well-intentioned the parties may be, the County respectfully suggests that it would be highly imprudent to rush to take actions without adequately analyzing the likely environmental impacts.

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It is difficult for the County to provide specific comments on the BDCP at this time because a stable, accurate, and finite project description has not yet been developed. However, based on the preliminary project description that has been released, the County notes that the following issues must be analyzed in the EIR:

1. Aesthetics

BDCP proposes water diversion and conveyance facilities that are more than three times larger than any existing or permitted diversion in this reach of the river. The canal BDCP proposes to build will be wider than the river from which it diverts. Obviously, the construction of facilities of this magnitude – grossly out-of-scale and incongruous with the existing natural environment – will have significant impacts on scenic vistas and scenic resources and will substantially degrade the existing visual character of the affected sites.

2. Agricultural Resources

BDCP proposes to convert thousands of acres of existing designated Farmland to non-agricultural use. The width and size of the Peripheral Canal (now known as the Isolated Conveyance Facility) that the BDCP proposes to construct will also bisect many existing farmlands, resulting in parcel sizes that are too small to be viable for farming operations. It is not clear to the County how BDCP proposes to avoid the use restrictions imposed by the Williamson Act on the many farmlands that are subject to those contracts.

3. Air Quality

In addition to impacts resulting from a construction project of this magnitude, BDCP will also create indirect impacts by taking thousands of agricultural lands out of production, thereby increasing greenhouse gas emissions by removing plants and causing releases of particulate matter.

4. Biological Resources

The purpose of BDCP is to protect certain identified species. Some of the activities the BDCP proposes, however, will have significant impacts on other sensitive species. For example, the Yolo Basin wetlands in the Yolo Bypass currently

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provides habitat for a number of sensitive species. BDCP proposes to alter the flood control operations criteria of upstream reservoirs to inundate the Bypass more

frequently and for longer periods. This action will, obviously, destroy the wetlands that currently exist in the Bypass. It will also have significant adverse effects on terrestrial species that rely on the existing habitat – for example, it will destroy much of the food supply for the large (100,000+ member) bat colony that currently resides in the Bypass. Likewise, this action has the potential to disrupt food supplies for migratory birds that use the Bypass.

BDCP also has the potential to conflict with the County's South Sacramento Habitat Conservation Plan (SSHCP), which is expected to be adopted well before BDCP is. The SSHCP has been carefully designed to balance development and conservation of natural lands. If BDCP acquires land within the County for conservation, and precludes the SSHCP from assembling that land into its preserves, BDCP may cause the SSHCP to be unable to fulfill its conservation plan.

5. Cultural Resources

BDCP proposes to construct facilities in areas of the Delta that have significant historical buildings and other resources. The impact of the project on these resources must be addressed.

6. Geology and Soils

BDCP proposes to take thousands of acres of land out of agricultural production. The soils impacts associated with this proposal must be studied.

7. Hazards and Hazardous Materials

The BDCP process is being led by parties from outside of the Delta who do not have a good sense of the Delta as a place or its residents as a community. As a result, BDCP sometimes overlooks potential problems with its proposals. For example, BDCP proposes to construct a canal that is wider than the Sacramento River. This canal will bisect existing lands and divide existing communities, yet BDCP has made no provision for any bridges to ensure adequate movement over the canal. As a result, if a fire were to occur, people and structures in the Delta may be trapped due to the construction of these inaccessible facilities.

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8. Hydrology and Water Quality

BDCP proposes dramatic changes to the hydrology of the Sacramento River. The size of the proposed diversion is 15,000 cubic feet per second, more than three times as large as any other diversion in this reach of the river. This diversion will necessarily have impacts on water quality as well, and both hydrology and water quality impacts must be disclosed in a manner that is comprehensible to average citizens. The impacts of BDCP on existing drainage and flow patterns, and the potential for the project to result in flooding, siltation, or erosion, must also be evaluated. Particularly since BDCP proposes to breach or remove certain levees and to construct gates to control flows and operations in certain waterways, the EIR must carefully analyze the risks that BDCP will expose people or structures to significant loss, injury or death due to flooding.

9. Land Use and Planning

As noted above, the canal BDCP proposes to build will physically divide existing communities within the Delta. BDCP also has the potential to conflict with the County's land use plan designations and the SSHCP, as set forth above.

The physical impacts of BDCP will also lead to social and economic impacts that must be examined.¹ For example, the BDCP seeks to conserve thousands of acres of Delta property, which will render that property unavailable for any future development. The impacts of this program on the economic viability and vitality of existing Delta businesses and communities, including but not limited to agricultural operations, must be analyzed. For example, if the BDCP requires a regulating reservoir close in proximity to the intake facilities, as engineering experts suggest, BDCP will have to acquire hundreds of acres close to the river, most likely in areas where Delta businesses are located. The removal of these businesses to flood the area for a regulating reservoir may diminish the customer base of the remaining businesses to the point where they are not able to survive. For these and other reasons, the potential for BDCP to cause the failure of Delta businesses and result in blight must also be studied.

¹ CEQA requires the analysis of social and economic impacts of a project to the extent that they contribute to or are caused by the project's physical impacts on the environment. A broader analysis of social and economic effects of the BDCP will be required under NEPA, since the EIS must discuss any economic and social effects that are interrelated to the project's physical effects on the environment.

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10. Noise

BDCP proposes to place pumps to divert up to 15,000 cfs of water in neighborhoods in Sacramento County that are already developed with existing residential, commercial, and other uses. The project will cause a significant permanent increase in ambient noise levels in this area, which must be evaluated in the EIR and mitigated.

11. Population and Housing

BDCP will induce substantial population growth in areas that rely on water exports from the Delta. As such, it is a growth-inducing project. The impacts of the growth that will be facilitated by this project must be evaluated in the EIR.

12. Recreation

BDCP will limit the movement and threaten the safety of boaters, swimmers, fishers, and others who use this reach of the Sacramento River for recreation. The project will also cause substantial physical deterioration of the existing recreational facilities (i.e., the river). The EIR must analyze these impacts.

13. Transportation/Traffic

As noted above, BDCP proposes to construct a large, impassable canal that will physically divide existing Delta communities. The traffic impacts of this impassable facility must be studied.

14. Utilities

BDCP's proposed diversion facilities have the potential to interfere with the Freeport Diversion Project, which has already been permitted by the State Board and is currently under construction. As such, BDCP threatens to undermine the adequacy of the water supplies on which the County and its residents rely. This impact to County water supplies must be addressed in the EIR.

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15. Mandatory Findings of Significance

As most parties to these Delta processes have acknowledged, the Delta community is a special place. BDCP has the potential to disrupt severely – if not altogether destroy – that community. The project's substantial adverse effects on the people of the Delta must be analyzed in the EIR.

Other Principles to Guide the BDCP Process

The County's August 27, 2008 letter also urged the BDCP Steering Committee to incorporate certain principles into the BDCP. The County stands by those principles, which include the following:

1. It is vitally important that all programs or facilities implemented or constructed in the Delta, including programs or facilities implemented as part of the BDCP, be subject to local governance and not result in significant adverse environmental, economic or social impacts to Delta counties or the watersheds of origin of Delta waters.

2. The County understands that restoration activities will require the purchase of lands within the Delta from willing sellers.² Presumably, many of these habitat lands have existing water supplies and water rights. The past history of our State provides ample evidence of why these water supplies and rights should not be exported.

3. The County of Sacramento and other local jurisdictions cannot be forced to bear the financial burdens associated with Delta ecosystem restoration and water supply reliability. The planning effort must also identify how the Plan participants will ensure that the County and other local governments with jurisdiction over the planning area will be kept whole if lands are being dedicated to environmental restoration. Specifically, the Steering Committee needs to consider the tax revenue implications of its habitat acquisitions and determine a means of protecting the local governments.

4. Sacramento County itself is in the process of developing the South Sacramento Habitat Conservation Plan ("SSHCP"), which may well overlap

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The County does not support the use of eminent domain to acquire habitat property.

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geographically with areas to be covered by the BDCP. The BDCP cannot have precedence over what Sacramento may itself develop in its SSHCP. Moreover, land use decisions within Sacramento County, including associated Endangered Species Act "permitting," cannot be based upon criteria that include compliance with the BDCP or that use the BDCP as a baseline.

5. Habitat restoration proposals must be undertaken in a manner that does not sacrifice public safety (in the form of adequate flood protection) or local agriculture.

As the Steering Committee proceeds with the development of the BDCP, Sacramento County urges the BDCP Steering Committee to incorporate these principles.

The County also draws your attention to its Resolution No. 2008-1171, Sacramento County Policy Positions With Respect To Delta Actions And Activities Including The Delta Vision and The Bay Delta Conservation Plan, which the Board of Supervisors adopted on November 18, 2008. In addition to considering the above factors during the BDCP planning process, it is imperative that the BDCP consider the following policies with respect to Bay-Delta activities:

1. Actions associated with the Delta ecosystem and water supply reliability for areas south of the Delta must not redirect unmitigated adverse environmental, economic or social impacts to Sacramento County.

2. Actions and activities associated with the Delta must honor and adhere to water rights priorities and area-of-origin protections. Sacramento County opposes water user fees that would tax water users in the areas of origin for the cost of mitigation efforts in the Delta or to provide a water supply for those south of the Delta.

3. Water conveyance facilities routed through Sacramento County must have no adverse effect on the existing and future operation of the Sacramento Regional County Sanitation District facilities or on the Freeport Regional Water Project. Other adverse impacts of water conveyance facilities routed through Sacramento County must be fully mitigated. Sacramento County must be fully involved in routing and operational issues of water conveyance facilities located within Sacramento County.

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4. Sacramento County will protect its governmental prerogatives in the areas of its local land use authority, tax and related revenues, public health and safety, economic development and agricultural stability.

5. Sacramento County will protect its ability to govern, as an elected body, from proposed usurpation through governance by a non-elected, appointed board or council. Any councils, commissions or boards established to "govern" the Delta must include voting membership for elected representatives from Sacramento County, and elected representatives from the Delta counties must be a majority on any of these bodies.

6. Financial resources must be committed to maintain and enhance vital transportation and flood control infrastructure within those areas of the Delta that are within Sacramento County. Financial resources also need to be committed to improved emergency response within the Delta.

7. Any solution to the problems being addressed in the Delta must account for the multiple causes of the Delta's decline and not simply focus on one or even a limited number of them.

8. Sacramento County will work with the BDCP's efforts to insure that it does not conflict with County land use planning, economic development, including agriculture, and that it is consistent and compatible with the SSHCP.

Sacramento County will abide by the policies outlined above and will object to any activities proposed under the BDCP that it deems inconsistent with these policies. As stated under Policy No. 8 above, Sacramento County will work with the BDCP's efforts to ensure that it does not conflict with the County's interests, including development of the SSHCP. Sacramento County will object to any aspect of the BDCP that compromises the SSHCP.

Conclusion

Sacramento County understands the need to address the problems in the Delta for the sake of both water supply reliability and ecosystem management. BDCP planning efforts, however, must analyze BDCP's potential impacts on the sensitive ecosystems in which it proposes to construct massive new facilities.

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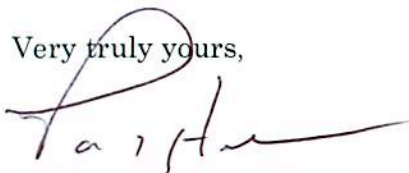
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As BDCP's project description evolves, it should incorporate measures to avoid these environmental impacts. The County also asks BDCP to consider the County's policies and to work with the County to design the project so that it adheres to these principles.

Please do not hesitate to contact either Keith DeVore or Michael Peterson of my staff if you would like to discuss any of these issues in more depth.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul Hahn", with a large, stylized initial "P" and a long horizontal flourish extending to the right.

Paul Hahn, Administrator

PH/JTB:sb:ds

cc: Karen Scarborough, Chair, Steering Committee
Joe Grindstaff
Sup. Don Nottoli